

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NATHANIEL JEMAL MILLER,

Defendant-Appellee.

UNPUBLISHED

April 15, 2003

No. 237929

Washtenaw Circuit Court

LC Nos. 01-000962-FH;

01-000975-FH

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff People of the State of Michigan (Washtenaw County Prosecutor) appeals by leave granted the sentences imposed on defendant's plea-based convictions of two counts of second-degree home invasion, MCL 750.110a(3). We remand for calculation of restitution in each case. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged in separate cases with two counts of second-degree home invasion as well as other offenses. Defendant agreed to plead guilty to the charges of second-degree home invasion in exchange for dismissal of the other charges and plaintiff's agreement to refrain from seeking sentence enhancement pursuant to MCL 769.11. The parties further agreed that the applicable statutory sentencing guidelines for second-degree home invasion recommended a minimum term range of thirty-six to seventy-one months' imprisonment.

The presentence investigation report (PSIR) determined that a total of \$9,347.15 was due in the two cases.¹ At sentencing defendant raised no objection to the fact that payment of restitution was recommended or to the amount of restitution deemed to be owed to the victims.² The trial court sentenced defendant to concurrent terms of three to fifteen years imprisonment for second-degree home invasion, with credit for 146 days. In response to the prosecutor's inquiry as to whether restitution would be ordered, the trial court stated that it would not do so. The trial court remarked that restitution was a matter for the civil courts.

¹ The PSIR indicated that the victims paid \$630 in deductibles and suffered uninsured losses in the amount of \$80. Insurance companies paid benefits totaling \$8,717.15.

² An insurance company is a victim for purposes of payment of restitution. MCL 780.766(2); *People v Washpun*, 175 Mich App 420, 426-427; 438 NW2d 305 (1989).

MCL 780.766(2) provides:

Except as provided in subsection (8), when sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate.

MCL 780.766(8) provides in pertinent part:

The court shall order restitution to the crime victim services commission or to any individuals, partnerships, corporations, associations, governmental entities, or other legal entities that have compensated the victim or the victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss.

We affirm defendant's terms of imprisonment and remand for imposition of an order of restitution in each case. MCL 780.766(2) requires the trial court to order restitution in addition to any other applicable penalty. *People v Ronowski*, 222 Mich App 58, 61; 564 NW2d 466 (1997). Absent a timely objection by the defendant, a trial court need not hold a hearing on the amount of restitution owed to the victim or victims, and need not make findings regarding the defendant's ability to pay restitution. Rather, the trial court may order restitution as stated in the PSIR. *People v Grant*, 455 Mich 221, 224 n 4; 565 NW2d 389 (1997); *People v Ho*, 231 Mich App 178, 192-193; 585 NW2d 357 (1998); see also MCL 780.767. Defendant's assertion that the trial court determined that no restitution was due and declined to order it for that reason is not supported by the record. The trial court simply concluded that it was not required to consider restitution. This conclusion was erroneous in light of the unambiguous language of MCL 780.766(2). The trial court must order the payment of restitution in each case. MCL 780.766(2); *Ronowski, supra*.

Remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood